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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,217	03/29/2004	Kevin Christopher Tisue	2465-001	3036
20551 7590 05/21/2009 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER GARRETT, ERIKA P				
ART UNIT		PAPER NUMBER		
3636				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,217

Applicant(s)

TISUE, KEVIN CHRISTOPHER

Examiner

ERIKA GARRETT

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-8,11,13-16 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4,9,10,12 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-8,11,13-16 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3,5-8,11,13-16,21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The terms "first **rigid** structural link", "second **rigid** structure link" and "**rigid** support link" are not supported by the original disclosure and are considered **new matter**. The specification does not disclose the links being rigid.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein (5,405,159). Klein discloses the use of a rigid cycle seat clamping assembly configures to attach a seat to a cycle, comprising a first rigid structural link (76) having

an upper end, a lower end and a cycle seat post for attachment to the cycle using the lower end, a second rigid structural link (74) having a first end, a second end and a cycle seat clamping structure wherein the first end of the second structural link which is connected to the upper end of the first structural link and a rigid support link (71 including 71BR-71CA) configures for providing support between said first structural link and having a first pivot connection end and a second pivot connection end. Each of the three links is attached to each other in a triangular truss (including 74,76) configuration having three pivotal axes. The attachment between second structural link and support links uses the second pivot connection end and second end of the second structural link being proximally located to said seat clamping structure and the attachment between the support link and the first structural link which uses the lower end of the first structural link and the first pivot connection end, see figure 12.

3. In regards to claims 2 and 6, angular position adjustment means for adjusting angular position of said seat, see column 1 lines 10-17.

4. In regards to claims 3, 7 and 11, further comprised of a horizontal position adjustment means for adjusting horizontal position of said seat, see column 1 lines 10-17.

5. In regards to claim 5, an adjustable, rigid cycle seat clamping assembly configured to attach a seat (70) to a cycle comprised of a first structural link (71) having a cycle seat post for attachment to the cycle at one end; a second structural link (74) pivotal attachment to the first structural link and having a cycle seat clamping structure and a third structural link(76) with a pivotal attachment to the second structural link and

pivotal attachment to the first structural link, the attachment between the second structural link being proximally located to the seat clamping structure, within each of the three attachments are arranged in a triangular configuration having three pivotal axes.

6. In regards to claim 8, wherein said angular position adjustment means comprises the quill link (77) for changing the angular position of said seat.

7. In regards to claim 21, each of the three links are attached together so as to resist rotation around longitudinal axes of each of the three links, see figure 12.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (5,405,159). Klein shows all structural features of the instant invention. Klein lacks the specifically recited method of attaching a cycle seat to a cycle.

10. It would have been obvious, if not inherent to one of having ordinary skill in pertinent art at the time of invention to modify Klein by producing the article by the specifically claimed method of attaching steps. Modifying Klein by incorporating the specifically claimed method of attaching steps in it production provides various positions for the occupants use and comfort.

Response to Arguments

11. Applicant's arguments filed 1/26/09 have been fully considered but they are not persuasive.

12. On page 6 of the remarks, Applicant argues that the present invention solves a different problem than that of Klein. In response, it is noted that a reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims. See *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

13. In response to applicants argument on page 7, that *"the applicant uses no springs, no rotary shock absorber, and no overboard stop"*. Regardless that Klien uses additional features, it teaches the structure and form as the same function as the applicant. The fact that the reference discloses additional structure not claimed is irrelevant. Therefore the examiner maintains the 102 rejection.

14. Finally, it is noted that "rigid" is a relative term. "Flexibility" and "rigidity" are relative terms, particularly since virtually anything will flex if enough pressure is applied to it. *Fredman v. Harris-Hub Co., Inc.* (DC NIII) 163 USPQ 397. Therefore, these links are considered "rigid" as there is no frame of reference to compare or determine what would be considered "rigid". Furthermore, element 71 is described as having rigid

portions including 71BR and 71CA (see column 20, lines 4-5). Links 74 and 76 are also considered rigid due to their truss-like design.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIKA GARRETT whose telephone number is (571)272-6859. The examiner can normally be reached on Monday-Thursday 9:30 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 3636

May 18, 2009

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636